

THE HONORABLE THOMAS S. ZILLY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

BUNGIE, INC.,

Plaintiff,

v.

AIMJUNKIES.COM; PHOENIX DIGITAL
GROUP, LLC; DAVID SCHAEFER; JORDAN
GREEN; JEFFREY CONWAY; and JAMES
MAY,

Defendants.

No. 2:21-cv-00811

PRETRIAL ORDER

[PROPOSED]

PUBLIC VERSION

Plaintiff Bungie, Inc. (“Bungie” or “Plaintiff”) and Defendants AimJunkies.com, Phoenix Digital Group, LLC (“Phoenix Digital”), David Schaefer, Jordan Green, Jeffrey Conway, and James May (collectively, “Defendants”) submit the following Pretrial Order.

I. JURISDICTION

Jurisdiction is vested in this court by virtue of 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331, 1338(a) and is based on the fact that this action arises under the Copyright Act (17 U.S.C. § 501, *et seq.*).

[PROPOSED] PRETRIAL ORDER
(No. 2:21-cv-00811) –1

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Phone: +1.206.359.8000
Fax: +1.206.359.9000

II. CLAIMS AND DEFENSES

Bungie will pursue the following claims for relief at trial:

1. Direct, vicarious, and contributory copyright infringement pursuant to the Copyright Act, 17 U.S.C. § 501, *et seq.*, due to Defendants’ development, sale, and distribution of certain cheat software for Bungie’s *Destiny 2* and *Destiny 2: Beyond Light*¹ video games (the “Cheat Software”).

Defendant James May will pursue the following counterclaim at trial:

2. Circumvention of Technological Measures under 17 U.S.C. § 1201(a) due to Bungie’s unauthorized access to Mr. May personal beyond limits permitted by Mr. May.

Defendants will pursue the following defenses at trial:

3. No software created, developed, marketed, advertised, sold or otherwise distributed by Defendants infringes any copyright of Bungie.

4. Defendant James May is not, and never has been, a member, owner, officer, director, employee or otherwise had a controlling interest in Phoenix Digital and is not responsible or liable for any activities carried on by Phoenix Digital.

5. The software at issue here was created by parties other than Defendants.

6. Defendants did not have access to the software Bungie accuses them of copying.

7. Bungie cannot show “substantial similarity” between any software distributed by Phoenix Digital and the copyrighted works asserted by Bungie in this action.

8. Phoenix Digital’s distribution of the software at issue in this case did not cause harm or damage to Bungie.

¹ Unless otherwise specified, collectively hereafter referred to as, “*Destiny 2*.”

1 Defendants will pursue the following affirmative defenses at trial:

2 9. Plaintiff's Amended Complaint fails to state claims for which relief may be granted.

3 10. Plaintiff's claims for copyright infringement are barred under the clear holding of
4 the Ninth Circuit Court of Appeals in *MDY Industries, LLC v. Blizzard Entertainment, Inc.*, 629
5 F.3d 928 (9th Cir. 2010), that, *as a matter of law*, alleged breaches of covenants in a copyright
6 license are *not* acts of copyright infringement.

7 11. Plaintiff's claims for copyright infringement are barred under the clear holding of
8 the Ninth Circuit Court of Appeals in *Lewis Galoob Toys, Inc. v. Nintendo of America*, 964 F.2d
9 965 (9th Cir. 1992) that, *as a matter of law*, the use of software resident on the computer of a game
10 player to enhance the player's performance of the game does *not* unlawfully create a "derivative
11 work" or otherwise infringe a copyright.

12 12. All claims for "statutory damages," "enhanced damages," "attorneys' fees" or other
13 relief under 17 U.S.C. §§ 505, 505 are barred under 17 U.S.C. §§ 412 and the clear holding of the
14 Ninth Circuit Court of Appeals in *Derek Andrew, Inc. v. Poof Apparel Corp.*, 528 F.3d 696 (9th
15 Cir. 2008) that, "to recover statutory damages, the copyrighted work must have been registered
16 prior to commencement of the infringement," and that, "the first act of infringement in a series of
17 ongoing infringements of the same kind marks the commencement of one continuing infringement
18 under § 412."

19 13. Plaintiff's claims are barred by the doctrine of unclean hands in that they are based
20 on information illegally and unlawfully obtained by Bungie through the unauthorized, clandestine
21 accessing and downloading of information contained in private files on the personal computer of
22 Defendant James May.

23 14. Plaintiff's claims are barred by the doctrine of unclean hands in that they are based
24 on information illegally and unlawfully obtained by Bungie, Inc., through breach of the Terms of
25 Service of Defendant Phoenix Digital Group LLC.
26

1 15. Plaintiff is precluded from recovering any damages that could have been avoided
2 through the exercise of reasonable care and due diligence.

3
4 Bungie will pursue the following defenses at trial:

5 16. None of the works allegedly accessed by Bungie are works protected by copyright,
6 pursuant to 17 U.S.C. § 1201(a)(1)(A).

7 17. Bungie did not circumvent any of May's technological measures that protect any
8 files on his computer as defined in 17 U.S.C. § 1201(a)(3)(A).

9
10 Bungie will pursue the following affirmative defenses at trial:

11 18. By accepting Bungie's Limited Software License Agreement ("LSLA") and
12 Privacy Policy, May authorized Bungie to collect information about his use of the Bungie Services,
13 actions taken within the Bungie Services, and his device, including his computer. The information
14 that May alleges Bungie collected from May's device is the type of information that May
15 authorized Bungie to collect. May consented to Bungie's alleged access of May's computer, files,
16 information, data, and/or copyrighted work(s).

17 19. By accepting Bungie's Limited Software License Agreement ("LSLA") and
18 Privacy Policy, May authorized Bungie to collect information about his use of the Bungie Services,
19 actions taken within the Bungie Services, and his device, including his computer. The information
20 that May alleges Bungie collected from May's device is the type of information that May
21 authorized Bungie to collect. May granted Bungie a license to access May's computer, files,
22 information, data, and/or copyrighted work(s).

23 20. In the Final Award (Dkt. No. 89-1), Counterclaimants were found to have violated
24 the DMCA (17 U.S.C. §§ 1201(a), 1201(b)(1)) and the Washington Consumer Protection Act
25 (RCW 19-86-020), and were found liable for breach of contract and tortious interference with a
26 contract in connection with their development, sale, and distribution of Defendants' Cheat

Software. The actions that form the basis of May's counterclaim—including May's surreptitious attempts to reverse engineer *Destiny 2* using reverse engineering tools provided and signed by Phoenix Digital—arise from May's development, sale, and distribution of Defendants' Cheat Software and Bungie's subsequent investigation of May's unlawful conduct. May's counterclaim is barred by the doctrine of unclean hands.

III. ADMITTED FACTS

The following facts are admitted by the parties:

1. *Destiny 2* is a shared-world first-person shooter video game created and owned by Bungie.

2. *Destiny 2* was released in September 2017 and has an estimated player base of over 30 million players.

3. Bungie owns all rights, title, and interest in the copyrights to *Destiny 2* and *Destiny 2: Beyond Light*, including U.S. copyright registrations for the computer software (Reg. Nos. TX 8-933-655 and TX 8-933-658) and audiovisual works (Reg. Nos. PA 2-282-670 and PA 2-280-030).

4. *Destiny 2* was first published on September 9, 2017. Bungie's copyright registration TX 8-933-655 was registered on February 9, 2021, and Bungie's copyright registration PA 2-282-670 was registered on March 23, 2021.

5. *Destiny 2: Beyond Light* was first published on November 10, 2020. Bungie's copyright registration TX 8-933-658 was registered on February 9, 2021, and Bungie's copyright registration PA 2-280-030 was registered on February 10, 2021.

6. Schaefer, Green, and Conway formed and became equal 1/3 owners of Phoenix Digital in 2012.

7. Schaefer, Green, and Conway each had full control and authority to manage Phoenix Digital while they were members.

1 8. Schaefer personally controlled every aspect of the sale of cheat software, including
2 communicating with cheat software developers, deciding whether to sell a cheat, allocating profits
3 from sales, and deciding when to stop selling a cheat.

4 9. On or around December 17, 2019, Phoenix Digital began distributing the first
5 version of the Cheat Software with only the “Extra-Sensory Perception” (“ESP”) feature.

6 10. On or around December 23, 2019, Phoenix Digital began distributing a second full
7 version of the Cheat Software with new features, including “AIMBOT” and “One Position Kill”
8 (“OPK”).

9 11. The Cheat Software’s ESP feature allows users to see other *Destiny 2* players and
10 non-player characters through solid walls by displaying a distinct box around the other players,
11 displaying the players’ names, and the distance between the cheating and non-cheating players.

12 12. The Cheat Software’s AIMBOT feature allows cheaters to automatically aim at
13 other *Destiny 2* player and non-player characters with little to no input (i.e., movement of the
14 mouse and/or joystick) by the cheater.

15 13. The Cheat Software’s OPK feature allows cheaters to either respawn at or move
16 (teleport) to the same space in *Destiny 2* so that the cheater’s abilities would be more effective at
17 defeating those opponents, accelerate the rate at which cheaters accumulate rewards and accolades.

18 14. May accepted Bungie’s Limited Software License Agreement (“LSLA”) in
19 October 2019 and the Bungie’s Privacy Policy that applies to his access to and use of *Destiny 2*,
20 and agreed to each subsequent version of Bungie’s LSLA in effect between October 2019 and May
21 2021.

22 15. May does not own U.S. copyright registrations for any files on his computer that
23 were allegedly accessed by Bungie.

24 16. During the course of this litigation, Bungie produced the document bearing
25 document production control number BUNGIE_WDWA_0000409.
26

17. During the course of this litigation, Bungie produced the document bearing document production control number BUNGIE_WDWA_0000367.

IV. ISSUES OF LAW

A. Agreed Issues of Law

The following are the issues of law to be determined by the court:

1. Which findings of fact and law as found by Judge Cox in the Final Award (Dkt. No. 89-1), as confirmed and entered by this Court, are binding in this proceeding? These findings include but are not limited to the following:

- a. *Destiny 2* is Bungie's copyrighted work. Final Award at 11.
- b. Defendants obtained unauthorized access to the *Destiny 2* software. *Id.* at 17.
- c. To operate, the Cheat Software necessarily creates unauthorized copies of *Destiny 2* code and unauthorized derivative works. *Id.* at 13.
- d. The cheat loader distributed by Defendants was designed to circumvent protections of *Destiny 2* by injecting code into the *Destiny 2* program without detection. *Id.* at 14.
- e. May connected reverse engineering tools to the *Destiny 2* game engine in order to reverse engineer *Destiny 2* and develop the Cheat Software that was sold on AimJunkies.com. May did so in concert with and for the benefit of the Phoenix Digital Defendants, and was the agent of these Defendants. *Id.* at 12.
- f. Defendants' violations of the DMCA anticircumvention statute were willful.
- g. Defendants sold at least 1,316 copies of the Cheat Software.
- h. May breached Bungie's Limited Software License Agreement by reverse engineering *Destiny 2*.

2. Does Bungie's purported circumvention of May's technological protection measures by "misleading" May legally constitute circumvention as defined in 17 U.S.C. § 1201(a)(3)(A)?

3. Is Bungie entitled to its actual damages and any of Defendants' profits from their infringement not taken into account in computing actual damages under 17 U.S.C. § 504?

4. Is Bungie entitled to its requested permanent injunctive relief under 17 U.S.C. § 502?

5. Is any party entitled to recover their reasonable attorneys' fees as the "prevailing party" under 17 U.S.C. § 505?

B. Defendants' Proposed Issue of Law

6. Whether violation of the Bungie LSLA for use of "cheat" software constitutes copyright infringement under Ninth Circuit law.

V. EXPERT WITNESSES

Bungie shall be limited to the following four expert witnesses, and each will or may testify concerning the following issues:

1. Dr. Edward Kaiser, 550 106th Avenue NE, Suite 207, Bellevue, WA 98004-5088, will testify as an expert witness concerning Bungie's *Destiny 2* software code, the *Destiny 2* game engine, the creation and operation of Defendants' Cheat Software, users of Defendants' Cheat Software, complaints from non-cheating players about Defendants' Cheat Software, and Bungie's harm, as is more particularly set forth in Bungie's Rule 26(a)(2) disclosures, and as a fact witness regarding Bungie's purchase and operation of Defendants' Cheat Software, and Bungie's intellectual property rights in *Destiny 2*.

2. Steven Guris, 134 Summer Crest Pl. SW, Marietta, GA 30060, will testify concerning the operation and his analysis of Defendants' cheat loader software and the harm to Bungie caused by cheat software, as is more particularly set forth in Bungie's Rule 26(a)(2) disclosures and the written report prepared by Mr. Guris.

3. Drew E. Voth, 1111 3rd Avenue, Suite 2450, Seattle, WA 98101, will testify concerning Defendants' profits from sales of the Cheat Software and rebut the testimony of David

Schaefer regarding the value of Phoenix Digital, as is more particularly set forth in Bungie's Rule 26(a)(2) disclosures and the written reports prepared by Mr. Voth.

4. Nate Buckmiller, Bungie's Director of Financial Systems & Reporting, 550 106th Avenue NE, Suite 207, Bellevue, WA 98004-5088, may testify (possible witness only) regarding the significant negative effect of cheat software, including Defendants' Cheat Software, on the gameplay of *Destiny 2* and the impact on player retention, as well as the harm caused by cheat software, including Defendants' Cheat Software, to Bungie.

Defendants shall be limited to one expert witness, who will testify concerning the following issues:

1. Brad A LaPorte, 331 Zenith Lane, Juno Beach, FL 33408, will testify as to the opinions stated in his Expert Report served August 28, 2023 as well as the grounds and other bases for those opinions.

VI. OTHER WITNESSES

The names and addresses of witnesses, other than experts, to be used by each party at the time of trial and the general nature of the testimony of each are:

On behalf of Bungie:

1. David Schaefer, 5669 Snell Ave., #433, San Jose, California 95123, will testify, including as the corporate representative of Phoenix Digital, concerning Defendants' creation, development, advertising, distribution, and sale of the Cheat Software, Defendants' direct and secondary infringement of Bungie's copyrights in *Destiny 2*, Defendants' revenue and profits from the sale of the Cheat Software, Defendants' spoliation of evidence in this matter, and other matters pertinent in this action, including those set forth in his depositions.

2. Jordan Green, 2839 SW Dickinson Street, Portland, Oregon 97219, may testify (possible witness only) concerning Defendants' creation, development, advertising, and sale of the Cheat Software, Defendants' direct and secondary infringement of Bungie's copyrights in *Destiny*

2, Defendants' revenue and profits from the sale of the Cheat Software, Defendants' spoliation of evidence in this matter, and other matters pertinent in this action, including those set forth in his depositions.

3. Jeffrey Conway, 8837 W. Vernon, Phoenix, Arizona 85037, may testify (possible witness only) concerning Defendants' direct and secondary infringement of Bungie's copyrights in *Destiny 2*, Defendants' revenue and profits from the sale of the Cheat Software, Defendants' spoliation of evidence in this matter, and other matters pertinent to this action, including those set forth in his depositions.

4. James May, 2217 Polo Park Drive, Dayton, Ohio 45439, will testify concerning Defendants' creation, development, advertising, and sale of the Cheat Software, Defendants' direct and secondary infringement of Bungie's copyrights in *Destiny 2*, Defendants' revenue and profits from the sale of the Cheat Software, Mr. May's computer and files allegedly accessed by Bungie, Mr. May's consent to Bungie's purported access to his computer, Defendants' spoliation of evidence in this matter, and other matters pertinent to this action, including those set forth in his depositions.

5. Jason Hahn, 1745 Juniper Hammock Street, Winter Garden, Florida 34787-2215, may testify (possible witness only, via deposition), regarding Defendants' business, documents he produced in response to Bungie's subpoena to him, and other matters pertinent to this action, including those set forth in his deposition.

6. Ronita Murray, 7700 Eastport Parkway, La Vista, Nebraska 98128, may testify (possible witness only) regarding documents produced by PayPal, Inc. in response to Bungie's subpoena to PayPal, Inc.

7. Stripe Inc. representative, physical address unknown, may testify (possible witness only) regarding documents produced by Stripe Inc. in response to Bungie's subpoena to Stripe Inc.

Bungie may also call any witness identified on Defendants' witness list.

1 Bungie reserves the right to call additional witnesses who may not be identified here for
2 purposes of rebuttal or impeachment.

3
4 **On behalf of Defendants:**

5 1. David Schaefer, c/o Philip P. Mann, Mann Law Group PLLC, 403 Madison Ave.
6 N. Ste. 240, Bainbridge Island, WA 98110, will testify as to the operation of Phoenix Digital
7 including its business model. He will deny the various unfounded accusations made by Bungie in
8 this case, including but not limited to Bungie's unfounded accusations that Phoenix Digital
9 "copied" any copyrighted materials of Bungie and/or infringed Bungie's trademarks. He will
10 further testify as to how Bungie violated the Aimjunkies/Phoenix Digital terms of service and
11 caused harm to Phoenix Digital. Mr. Schaefer will also testify as to all accusations that may be
12 made against him and/or Phoenix Digital at trial by Bungie.

13 2. James May, c/o Philip P. Mann, Mann Law Group PLLC, 403 Madison Ave. N.
14 Ste. 240, Bainbridge Island, WA 98110, will testify that he is not and has never been a part of
15 Phoenix Digital and had nothing to do with the alleged, "cheat" software that is the subject matter
16 of this lawsuit, including, but not limited to, the creation, development and/or distribution of the
17 software. Mr. May will testify that he has never received any of the proceeds from distribution or
18 sale of the subject software. Mr. May will deny the various unfounded accusations made by Bungie
19 in this case, including but not limited to Bungie's unfounded accusations that he helped develop
20 or otherwise "created" the subject software. Phoenix Digital "copied" any copyrighted materials
21 of Bungie and/or infringed Bungie's trademarks. He will further testify as to how Bungie, without
22 his authorization, unlawfully accessed his private computer files and caused harm to him. Mr. May
23 will also testify as to all accusations that may be made against him at trial by Bungie.

24 3. Jordan Green, c/o Philip P. Mann, Mann Law Group PLLC, 403 Madison Ave. N.
25 Ste. 240, Bainbridge Island, WA 98110, may testify (possible witness only) as to the operation of
26 Phoenix Digital Group including its business model. He will deny the various unfounded

1 accusations made by Bungie in this case, including but not limited to Bungie’s unfounded
 2 accusations that Phoenix Digital “copied” any copyrighted materials of Bungie and/or infringed
 3 Bungie’s trademarks. He may further testify as to how Bungie violated the Aimjunkies/Phoenix
 4 Digital terms of service and caused harm to Phoenix Digital. Mr. Green may also testify as to all
 5 accusations that may be made against him and/or Phoenix Digital at trial by Bungie.

6 4. Jeffrey Conway, c/o Philip P. Mann, Mann Law Group PLLC, 403 Madison Ave.
 7 N. Ste. 240, Bainbridge Island, WA 98110, may testify (possible witness only) as to the operation
 8 of Phoenix Digital Group including its business model. He will deny the various unfounded
 9 accusations made by Bungie in this case, including but not limited to Bungie’s unfounded
 10 accusations that Phoenix Digital “copied” any copyrighted materials of Bungie and/or infringed
 11 Bungie’s trademarks. He may further testify as to how Bungie violated the Aimjunkies/Phoenix
 12 Digital terms of service and caused harm to Phoenix Digital. Mr. Conway may also testify as to
 13 all accusations that may be made against him and/or Phoenix Digital at trial by Bungie.

14 5. Donald McGowan, c/o William Rava, Perkins Coie LLP, 1201 Third Ave., Suite
 15 4900, Seattle, WA 98101, will testify as to public statements he has made on behalf of Bungie
 16 concerning Bungie’s desire and efforts to combat “cheating” in Destiny 2.

17 6. John Doe,² 550 106th Avenue NE, Suite 207, Bellevue, WA 98004, will testify as
 18 to his acquisition of software from the “Aimjunkies” website, including but not limited to his use
 19 of an assumed name in doing so and his agreement to the Aimjunkies/Phoenix Digital Terms of
 20 Service in so doing. John Doe will also testify as to the circumstances under which he was
 21 instructed or otherwise induced to perform these acts on behalf of Bungie.

22 7. Dr. Edward Kaiser (will testify) (Adverse Witness) 550 106th Avenue NE, Suite
 23 207, Bellevue, WA 98004-5088. Dr. Kaiser will testify that he never saw, used, analyzed or
 24 otherwise inspected the software at issue in this action.

25 ² “John Doe” refers to the individual whose identifying information is protected from disclosure pursuant to
 26 the Court’s May 2, 2023 Order granting Bungie’s motion for protective order. Dkt. No. 126. The continued protection
 of John Doe’s identifying information is the subject of Bungie’s Motion in Limine. Dkt. No. 204.

8. Mr. Steven Guris (possible witness only) (Adverse Witness) 550 106th Avenue NE, Suite 207, Bellevue, WA 98004-5088. Mr. Guris may testify that he never saw, used, analyzed or otherwise inspected the software at issue in this action.

Defendants may also call any witness identified on Plaintiff's Witness list.

Defendants reserve the right to call additional witnesses who may not be identified here for purposes of rebuttal or impeachment.

VII. EXHIBITS

Bungie's exhibit list, including Defendants' stipulations, and authenticity and/or evidentiary objections are attached hereto as **Appendix A**.

Defendants' exhibit list, including Bungie's stipulations, and authenticity and/or evidentiary objections are attached hereto as **Appendix B**.

Bungie's deposition designations are attached as **Appendix C**.

VIII. ACTION BY COURT

(a) This case is scheduled for trial before a jury on December 4, 2023, at 9:00 a.m.

(b) Trial briefs shall be submitted to the Court on or before November 9, 2023.

(c) Jury instructions requested by either party shall be submitted to the Court on or before November 9, 2023. Suggested questions of either party to be asked of the jury by the Court on voir dire shall be submitted to the Court on or before November 9, 2023.

This order has been approved by the parties as evidenced by the signatures of their counsel. This order shall control the subsequent course of the action unless modified by a subsequent order. This order shall not be amended except by order of the Court pursuant to agreement of the parties or to prevent manifest injustice.

1 Dated: November 9, 2023

2 By: s/Jacob P. Dini

3 William C. Rava, Bar No. 29948

4 Christian W. Marcelo, Bar No. 51193

5 Jacob P. Dini, Bar No. 54115

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14 *Attorneys for Plaintiff Bungie, Inc.*

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Attorneys for Defendants

APPENDIX A

BUNGIE, INC.'S TRIAL EXHIBIT LIST - NOVEMBER 9, 2023

TX No.	Description	Admissibility Stipulated	Authenticity Stipulated / Admissibility Disputed	Authenticity Disputed	Admitted (for Court use)	Objection Basis / Notes
1	Bungie Destiny 2: Audiovisual Copyright Registration & Deposit Materials re U.S. Copyright Registration Number: PA 2-282-670			X		Stipulate to authenticity and admissibility of U.S. Copyright Registration Number TX 8-933-655. Remaining documents subject to authenticity and admissibility challenge at trial.
2	Bungie Destiny 2: Software Code Copyright Registration & Deposit Materials re U.S. Copyright Registration Number: TX 8-933-655			X		Stipulate to authenticity and admissibility of U.S. Copyright Registration Number TX 8-933-655. Remaining documents subject to authenticity and admissibility challenge at trial.
3	Bungie Destiny 2: Beyond Light Audiovisual Copyright Registration & Deposit Materials re U.S. Copyright Registration Number: PA 2-280-030			X		Stipulate to authenticity and admissibility of U.S. Copyright Registration Number TX 8-933-655. Remaining documents subject to authenticity and admissibility challenge at trial.
4	Bungie Destiny 2: Beyond Light Software Code Copyright Registration & Deposit Materials re U.S. Copyright Registration Number: TX 8-933-655			X		Stipulate to authenticity and admissibility of U.S. Copyright Registration Number TX 8-933-655. Remaining documents subject to authenticity and admissibility challenge at trial.
5	Bungie Destiny 2: Beyond Light Copyright Registration & Deposit Materials - video file titled: Beyond_Light_Launch_B_Roll_16x9_1080p30_H264.mp4			X		Stipulate to authenticity and admissibility of U.S. Copyright Registration Number TX 8-933-655. Remaining documents subject to authenticity and admissibility challenge at trial.
6	Trademark Registration Certificate for DESTINY (& design) (U.S. Reg. No. 4,321,315)		X			Relevance
7	DESTINY (& design) mark		X			Relevance
8	Destiny design mark		X			Relevance
9	USPTO TSDR report re mark: Destiny 2: Beyond Light		X			Relevance
10	USPTO TSDR report re mark: Destiny 2: The Witch Queen		X			Relevance
11	USPTO TSDR report re mark: Destiny 2: Lightfall		X			Relevance
12	Screenshot of Destiny 2 trailer		X			Relevance
13	Screenshot of Destiny 2 trailer		X			Relevance
14	2020-11-02 Video advertising cheat software			x		Also, Relevance
15	2020-11-02 Screenshot TikTok page with video			X		Also, Relevance
16	Screenshots of cheat			X		Also, Relevance
17	D2 Base (v1.0.5.0) Object Code.zip			X		
18	D2 BeyondLight (v3.0.0.1) Object Code.zip			X		
19	Bungie LSLAs from January 2019 – August 24, 2021		X			Relevance
20	March 6, 2020 LSLA	X				
21	Phoenix Digital Group, LLC Agreement (January 2016)		X			Relevance
22	Entity Information re Phoenix Digital Group LLC		X			Relevance
23	2019 Phoenix Digital Group 1065 Tax Form	X				
24	2020 Phoenix Digital Group 1065 Tax Form	X				
25	7837 PayPal Account Information Sheet		X			Relevance
26	7837 PayPal Account Transaction Sheet		X			Relevance
27	7837 PayPal Account Transaction Sheet		X			Relevance
28	7837 PayPal Account Transaction Sheet		X			Relevance
29	J. May PayPal Account Information Sheet		X			Relevance
30	J. May PayPal Account Transaction Sheet		X			Relevance
31	J. May PayPal Account Transaction Sheet		X			Relevance
32	7697 PayPal Account Information Sheet (AimJunkies.com account)		X			Relevance
33	Excel Spreadsheet filename: Transactions for PayPal Account 1609691869551427696.xlsx (AimJunkies.com account)		X			Relevance
34	3990 PayPal Account Information Sheet		X			Relevance

BUNGIE, INC.'S TRIAL EXHIBIT LIST - NOVEMBER 9, 2023

TX No.	Description	Admissibility Stipulated	Authenticity Stipulated / Admissibility Disputed	Authenticity Disputed	Admitted (for Court use)	Objection Basis / Notes
35	3990 PayPal Account Transaction Sheet		X			Relevance
36	PayPal Account Information Sheet 1924158087678175184		X			Relevance
37	'1346 PayPal Account Information Sheet (Virtual Advantage Account)		X			Relevance
38	'1346 PayPal Account Transaction Sheet (Virtual Advantage Account)		X			Relevance
39	PayPal Account Information Sheet		X			Relevance
40	'0031 PayPal Account Information Sheet (PDG Business account)		X			Relevance
41	'0031 PayPal Account Transaction Sheet (PDG Business Account)		X			Relevance
42	'0031 PayPal Account Transaction Sheet (PDG Business Account)		X			Relevance
43	0761 PayPal Account Information Sheet (Mombot Account)		X			Relevance
44	0761 PayPal Account Transaction Sheet (Mombot Account)		X			Relevance
45	'3104 PayPal Account Information Sheet (Velocity Cheats account)		X			Relevance
46	'3104 PayPal Account Transaction Sheet (Velocity Cheats account)		X			Relevance
47	PayPal Account Information Sheet 1546337061400041990 (Jeff Conway)		X			Relevance
48	PayPal Account Information Sheet 1967548227410947364 (Robin Conway)		X			Relevance
49	Spreadsheet re: Transactions for PayPal Account 1967548227410947364 (Jeff Conway)		X			Relevance
50	PayPal Account Information Sheet 1594988406934926036 (Robin Conway)		X			Relevance
51	Transactions for PayPal Account 1594988406934926036 (Jordan Green)		X			Relevance
52	Purchase receipt			X		
53	Screenshot from AJ website re Destiny 2 - Cheat Information		X			
54	Aimjunkies.com screenshot - Thread: Destiny 2 - Cheat Information		X			
55	Aimjunkies.com Subscription Information page for Destiny 2 VIP Access cheat. Payment page.		X			
56	Aimjunkies.com screenshot - Subscription Information - Destiny 2 VIP Access		X			
57	Screenshot from AJ website support forum thread		X			
58	Screenshot from AJ website support forum		X			
59	Screenshot from AJ website		X			
60	Screenshot from AJ website support forums		X			
61	Screenshot from AJ website support forums		X			
62	Screenshot from AJ website support forums		X			
63	Screenshot of Virtual Advantage website					
64	Screenshot from AJ website		X			
65	Screenshot of Wayback Machine archived page re AJ website		X			
66	Screenshot of archive.today historical web page re AJ website			X		
67	Screenshot of AJ website			x		
68	AimJunkies web page captured on December 20, 2022		x			Relevance
69	2019-10-12 User report			X		
70	Weekly Game Security Reports			X		
71	2020-01-31 Email re Preparing PR/Community response to cheating in Trials (with attachment)			X		
72	November 2019 - January 2020 emails from AimJunkies.com to Schaefer		X			Relevance
73	2019-12-07 Email from Admin@aimjunkies.com to Schaefer.		X			Relevance
74	2019-12-17 Email from Admin@aimjunkies.com to Schaefer.		X			Relevance

BUNGIE, INC.'S TRIAL EXHIBIT LIST - NOVEMBER 9, 2023

TX No.	Description	Admissibility Stipulated	Authenticity Stipulated / Admissibility Disputed	Authenticity Disputed	Admitted (for Court use)	Objection Basis / Notes
75	2019-12-31 Email from Admin@aimjunkies.com to Schaefer.		X			Relevance
76	2020-01-03 Email from Admin@aimjunkies.com to Schaefer.		X			Relevance
77	December 2019 emails from AimJunkies to ssjasongaming.com		X			Relevance
78	2019-12-17 Email from AimJunkies to ssjasongaming.com		X			Relevance
79	2019-12-20 Email from AimJunkies to ssjasongaming.com		X			Relevance
80	2019-12-21 Email from AimJunkies to ssjasongaming.com		X			Relevance
81	2019-12-22 Email from AimJunkies to ssjasongaming.com		X			Relevance
82	2019-12-23 Email from AimJunkies to ssjasongaming.com		X			Relevance
83	2019-12-24 Email from AimJunkies to ssjasongaming.com		X			Relevance
84	2019-12-25 Email from AimJunkies to ssjasongaming.com		X			Relevance
85	2019-12-26 Email from AimJunkies to ssjasongaming.com		X			Relevance
86	2019-12-27 Email from AimJunkies to ssjasongaming.com		X			Relevance
87	2019-12-28 Email from AimJunkies to ssjasongaming.com		X			Relevance
88	2019-12-29 Email from AimJunkies to ssjasongaming.com		X			Relevance
89	2019-12-30 Email from AimJunkies to ssjasongaming.com		X			Relevance
90	2019-12-31 Email from AimJunkies to ssjasongaming.com		X			Relevance
91	J. May login notifications			X		
92	PayPal receipt for purchase of cheat	X				
93	2020-01-03 Email from Bungie Network Operations Center RE: Incoming Ban Wave			X		
94	2020-01-07 Email from Bungie re Internal DPS Email: CHEATING REPORT			X		
95	2020-01-07 Cheat report from Bungie.net user Gladiator			X		
96	2020-02-14 Email RE: 860792 - Analyze the aim junkies crash dumps to determine how it works			X		
97	2020-02-05 GST team update			X		
98	2020-02-05 GST team update			X		
99	2020-10-14 Teams message			X		
100	2020-10-14 Emails			X		
101	2020-10-29 Teams message			x		
102	2020-10-30 Email re AimJunkies			X		
103	2020-11-04 Letter from M. Humphrey to J. Conway (Conway DX 13)	X				
104	2020-11-04 Letter from M. Humphrey to J. Conway (Schaefer DX 43)	X				
105	2020-11-08 Proof of Service of Letter to J. Conway	X				
106	2020-11-09 MSK Email to J. Green with letter attached	X				
107	2020-11-09 Email from MSK to Schaefer with letter attached	X				
108	2020-11-11 Email re banned accounts			X		
109	2020-11-11 Email re Swify association with AimJunkies			X		
110	2020-11-20 Email re DNS for AimJunkies			X		
111	AimJunkies Twitter			X		
112	Screenshot of 2020-11-11 Tweet by AimJunkies account			X		
113	2020-11-20 LTR Conway to Humphrey		X			Relevance

BUNGIE, INC.'S TRIAL EXHIBIT LIST - NOVEMBER 9, 2023

TX No.	Description	Admissibility Stipulated	Authenticity Stipulated / Admissibility Disputed	Authenticity Disputed	Admitted (for Court use)	Objection Basis / Notes
114	2020-12-11 Email from V. Salinas (Perkins Coie) to J. Conway		X			Relevance
115	2020-12-11 LTR Simpkins to Conway		X			Relevance
116	2021-01-11 Email re Special action			X		
117	2021-02-24 Email to GST			X		
118	2021-02-25 Email re AimJunkies			X		
119	2021-02-25 Email re AimJunkies			X		
120	2021-02-25 Email re AimJunkies			X		
121	2021-02-25 Email re J. May, Phoenix Digital Group			X		
122	2021-02-25 Email re Phoenix Digital Group			X		
123	2021-02-25 Email re swify			X		
124	March 7, 2021 Resignation Letter from PDG	X				
125	2021-04-22 Email re Aimjunkies			X		
126	2021-06-15 Email re Aimjunkies			X		
127	2021-06-29 Letter from K. Martin (prior counsel) to H. Simpkins	X				
128	2021-08-26 Email sent by D. Schaefer to Bungie's CEO, Pete Parsons		X			Relevance
129	2022-01-31 Press Release "Sony Interactive Entertainment to Acquire Leading Independent Videogame Developer, Bungie" https://www.sie.com/en/corporate/release/2022/220201.html (captured on June 9, 2022)		X			Relevance
130	Screenshot of the metadata associated with the .pdf file located at https://torrentfreak.com/images/BME-to-Acquire-.pdf (captured on June 9, 2022)			X		
131	2022-04-28 Article: "Court Dismisses Bungie's Copyright Claims Against Cheat Seller AimJunkies, for Now" https://torrentfreak.com/court-dismisses-bungies-copyright-claims-against-cheat-seller-aimjunkies-for-now-220528/ (captured on May 16, 2022)		X			Relevance, Prejudice
132	Website Asset Purchase Agreement.	X				
133	"Press release" from PDG / Blome	X				
134	2022-05-23 Article: "Bungie Takes Another Shot at Cheat Seller AimJunkies in Court" https://torrentfreak.com/bungie-takes-another-shot-a-cheat-seller-aimjunkies-in-court-220523/		X			Relevance, Prejudice
135	2022-05-19 Exhibits to W. Rava Declaration in Support of Plaintiff's Motion for Preliminary Injunction (Dkt. No. 37-1)	X				
136	Banned player spreadsheet			X		Relevance, Prejudice
137	Banned player appeal spreadsheet			X		Relevance, Prejudice
138	James May ban history			X		Relevance, Prejudice
139	Spreadsheet: 2022 09 15 Bungie - In Game Cheater Reports Oct 2019 through Feb 2021.csv			X		
140	Stripe sales records produced by Defendants in first document production. October 2020 through January 2021			X		
141	Stripe Spreadsheet			X		
142	Spreadsheet: List of Stripe accounts			X		
143	Spreadsheet: List of transactions associated with all Stripe accounts from STRIPE_0000001			X		
144	Spreadsheet: Additional list of transactions associated with all Stripe accounts			X		
145	2022-01-10 Declaration of David Schaefer in Support of Defendants' Motion to Dismiss and/or Refer to Mandatory Arbitration (Dkt 28-5, 28-6)		X			Relevance, Prejudice
146	2022-06-06 Declaration of David Schaefer in Opposition to Plaintiff's Motion for Preliminary Injunction (Dkt 39-1, 39-2)		X			Relevance, Prejudice

BUNGIE, INC.'S TRIAL EXHIBIT LIST - NOVEMBER 9, 2023

TX No.	Description	Admissibility Stipulated	Authenticity Stipulated / Admissibility Disputed	Authenticity Disputed	Admitted (for Court use)	Objection Basis / Notes
147	2022-06-09 Declaration of David Schaefer in Support of Defendants' Motion to Dismiss (Dkt 40-3)		X			Relevance, Prejudice
148	2022-10-24 Declaration of David Schaefer in Support of Defendants' Motion to Dismiss (Dkt 67-2)		X			Relevance, Prejudice
149	2023-04-10 Declaration of David Schaefer in Opposition to Plaintiff's Motion for Sanctions and to Compel Discovery (Dkt 107-4)		X			Relevance, Prejudice
150	2022-06-09 Declaration of James May in Support of Defendants' Motion to Dismiss (Dkt 40-4)		X			Relevance, Prejudice
151	2022-10-24 Declaration of James May in Support of Defendants' Motion to Dismiss (Dkt 67-1)		X			Relevance, Prejudice
152	2023-08-07 Declaration of James May in Opposition to Plaintiff's Motion for Summary Judgment (Dkt 175)		X			Relevance, Prejudice
153	2022-06-09 Declaration of Jeffrey Conway in Support of Defendants' Motion to Dismiss (Dkt 40-1)		X			Relevance, Prejudice
154	2022-06-09 Declaration of Jordan Green in Support of Defendants' Motion to Dismiss (Dkt 40-2)		X			Relevance, Prejudice
155	2022-07-25 Defendant Phoenix Digital Group LLC's Responses to Plaintiff's First Set of Interrogatories Nos. 1-7		X			Relevance, Prejudice
156	2022-09-02 Defendant Phoenix Digital Group LLC's Responses to Plaintiff's First Set of Interrogatories Nos. 2, 6, 7		X			Relevance, Prejudice
157	2022-10-10 Defendant James May's Responses to Plaintiff's First Set of Interrogatories Nos. 1-5		X			Relevance, Prejudice
158	2022-10-10 Defendant Phoenix Digital Group LLC's Responses to Plaintiff's Second Set of Requests for Production Nos. 31 - 43		X			Relevance, Prejudice
159	2023-03-03 Defendant James May's Responses to Plaintiff's Second Set of Interrogatories Nos. 6-8		X			Relevance, Prejudice
160	2023-03-14 Defendant James May's Supplemental Response to Plaintiff's Interrogatory No. 8		X			Relevance, Prejudice
161	2023-03-15 Defendant Phoenix Digital Group LLC's Supplemental Response to Plaintiff's Interrogatory No. 10		X			Relevance, Prejudice
162	Declaration of Custodian of Records of PayPal, Inc. with Objections and Responses to Subpoena attached		X			Relevance
163	2022-02-10 Bungie's Demand for Arbitration		X			Relevance, Prejudice
164	2022-06-22 Respondents Response to Demand for Arbitration		X			Relevance
165	2022-10-10 Respondents' Responses to Claimants First Set of Interrogatories Nos.1-11		X			Relevance
166	2022-10-10 Respondents' Responses to Claimants First Set of Requests for Production Nos. 1-8		X			Relevance
167	Compilation of court orders: 2023-06-13 Order confirming Arbitration Award (Dkt 140); 2023-02-16 Final Arbitration Award (Dkt. 89-1); 2023-06-13 Partial Judgment (Dkt. No. 141)		X			Relevance
168	2023-06-23 Minute Order re Bungie's Sanctions Motion (Dkt 142)		X			Relevance
169	Expert CV of Steven Guris	X				
170	Screenshot filename: aimjunkies-install-instructions-1.png			X		
171	Screenshot filename: aimjunkies-install-instructions-2.png			x		
172	Screenshot filename: destiny2-ads-1.png			X		
173	Screenshot filename: destiny2-ads-2.png			X		
174	Screenshot filename: destiny2-guardian.png			X		
175	Screenshot filename: destiny2-hud.png			x		
176	Screenshot filename: destiny2-ingame-store.png			X		

BUNGIE, INC.'S TRIAL EXHIBIT LIST - NOVEMBER 9, 2023

TX No.	Description	Admissibility Stipulated	Authenticity Stipulated / Admissibility Disputed	Authenticity Disputed	Admitted (for Court use)	Objection Basis / Notes
177	Screenshot filename: destiny2-silver-packages.png			X		
178	Screenshot filename: virustotal-aimjunkies-loader-archive.png			X		
179	Screenshot filename: virustotal-aimjunkies-loader-executable.png			X		
180	Virustotal screenshot			X		
181	Expert CV of Drew Voth	X				
182	Bungie GST guidelines			X		
183	Data Ingestion Pipeline			X		
184	2020-10-14 Email Re: Bungie + CheckPoint/NovaCoast sync	X				
185	2021-01-06 Email Re: Bungie + CheckPoint/NovaCoast sync (with attachment)	X				
186	2023-10-16 Order (Dkt 201) granting in part and denying in part Plaintiff Bungie, Inc.'s motion for summary judgment		X			Relevance
187	2023-11-01 Order (Dkt 216) granting the derred portion of Plaintiff's motio for discovery sanctions docket no. 99.		x			Relevance

APPENDIX B

USDC Western District of Washington-Seattle Case No. 2:21-cv-811

TABLE OF DEFENDANTS' TRIAL EXHIBITS - NOVEMBER 9, 2023

Exhibit #	Description	Admissibility Stipulated	Authenticity Stipulated / Admissibility Disputed	Authenticity Disputed	Admitted (for Court use)	Objection Basis / Notes
200	Expert Report – Brad LaPorte		X			Hearsay (801). Prejudicial (403). Relevance (401).
201	Brad LaPorte Resume	X				
202	Brad LaPorte Publications			X		Hearsay (801). Relevance (401). Authenticity.
203	Amended Answer and Counterclaim (DKT#72)		X			Hearsay (801). Relevance (401).
204	BUNGIE_WDWA_0000409.XLSX	X				
205	Bungie Privacy Policy (DKT#66-1)	X				
206	Bungie LSLA (Dkt#34-1)	X				
207	BUNGIE_WDWA_0000367	X				
208	Phoenix Digital Terms of Service (DKT#75-2)			X		Authenticity. Hearsay (801). Relevance (401).
209	BUNGIE_WDWA_0000468		X			Hearsay (801). Foundation. Relevance (401).
210	BUNGIE_WDWA_0000413	X				
211	BUNGIE_WDWA_0000415	X				
212	BUNGIE_WDWA_0000464	X				
213	BUNGIE_WDWA_0000465	X				
214	BUNGIE_WDWA_0000466	X				Same as TX 92
215	BUNGIE_WDWA_0000467	X				
216	BUNGIE_WDWA_0000479		X			Hearsay (801).
217	BUNGIE_WDWA_0000481	X				
218	BUNGIE_WDWA_0000482	X				
219	BUNGIE_WDWA_0000516-7		X			Relevance (401).
220	BUNGIE_WDWA_0000539	X				
221	BUNGIE_WDWA_0000540	X				
222	BUNGIE_WDWA_0000541	X				
223	BUNGIE_WDWA_0000368 (AEO)	X				
224	BUNGIE_WDWA_0000410 (AEO)	X				
225	BUNGIE_WDWA_0000412 (AEO)	X				
226	BUNGIE_WDWA_0000416 (AEO)	X				
227	BUNGIE_WDWA_0000417 (AEO)	X				Same as Ex. 224
228	BUNGIE_WDWA_0000419 (AEO)	X				Same as Ex. 225
229	BUNGIE_WDWA_0000420 (AEO)	X				
230	BUNGIE_WDWA_0000421 (AEO)	X				Same as Ex. 223
231	BUNGIE_WDWA_0000463 (AEO)	X				Same as Ex. 229
232	BUNGIE_WDWA_0000606-7	X				
234	Mann Declaration Exhibit A (DKT#191-1)	X				
235	Mann Declaration Exhibit B (DKT#191-2)	X				

USDC Western District of Washington-Seattle Case No. 2:21-cv-811

TABLE OF DEFENDANTS' TRIAL EXHIBITS - NOVEMBER 9, 2023

Exhibit #	Description	Admissibility Stipulated	Authenticity Stipulated / Admissibility Disputed	Authenticity Disputed	Admitted (for Court use)	Objection Basis / Notes
236	Mann Declaration Exhibit C (DKT#191-3)	X				
237	Mann Declaration Exhibit D (DKT#191-4)	X				
238	Kaiser Declaration (DKT#36)	X				
239	Kaiser Declaration (DKT#66)	X				
240	Kaiser Declaration (DKT#158)	X				
241	Kaiser Declaration Exhibit 2 (AEO) (DKT#159)	X				Same as TX 136
242	Kaiser Declaration (DKT#183)	X				
243	BUNGIE_JAMS_0000060	X				Same as TX 214
244	BUNGIE_JAMS_0001026	X				
245	BUNGIE_JAMS_0001059	X				Same as TX 95
246	BUNGIE_JAMS_0001061-2	X				
247	BUNGIE_JAMS_0001153	X				
248	BUNGIE_JAMS_0001383	X				
249	BUNGIE_JAMS_0000720	X				Same as TX 218
250	BUNGIE_JAMS_0000060	X				Same as TX 214
251	BUNGIE_JAMS_0000060	X				Same as TX 214
252	BUNGIE_JAMS_0000060	X				Same as TX 214
253	Arbitration Exhibit PDG0004			X		Authenticity. Hearsay (801). Relevance (401).
254	Arbitration Exhibit PDG0006			X		Authenticity. Hearsay (801). Relevance (401).
255	Arbitration Exhibit PDG0014a			X		Authenticity. Hearsay (801). Relevance (401).
256	Arbitration Exhibit PDG0014b			X		Authenticity. Hearsay (801). Relevance (401).
257	Arbitration Exhibit PDG0015			X		Authenticity. Hearsay (801). Relevance (401).
258	Arbitration Exhibit PDG0018			X		Authenticity. Hearsay (801). Relevance (401).
259	Arbitration Exhibit PDG0066			X		Authenticity. Hearsay (801). Relevance (401). Same as TX208
260	Arbitration Exhibit PDG0087			X		Authenticity. Hearsay (801). Relevance (401).
261						
262						
263						
264						
265						
266						
267						

APPENDIX C
FILED UNDER SEAL